

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOLORES B. LOPEZ and DEPARTMENT OF VETERANS AFFAIRS,
SAN JUAN MEDICAL CENTER, San Juan, P.R.

*Docket No. 96-1176; Submitted on the Record;
Issued April 22, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an emotional condition in the performance of her federal employment.

The Board has duly reviewed the case record and finds that appellant has not met her burden of proof in this case.

Appellant, a registered nurse, alleged that she sustained an emotional condition in the performance of her federal employment, which began on February 24, 1992, due to a number of personal and professional confrontations. Appellant stated that she was told by her supervisor that she did not work fast enough and that she was constantly criticized. She stated that she believed she performed her job well, that she loved her work, and that as a professional she cared about the quality of her work. Appellant stated that she became depressed however and was unable to concentrate on her work duties.

In supplemental statements appellant outlined specific allegations. Appellant stated that in April 1992 she was terminated from her position, but was later reinstated. She stated that in approximately November 1992 she was denied the opportunity to take charge of the unit. Further, appellant alleged that on March 25, 1993 she was approached by Carlos Reyes, a registered nurse (RN), and asked in an unprofessional manner whether she knew how to use a defibrillator. Before appellant could answer she was told to go back to school and learn her job. Appellant stated that on that same day she was told by Carmen Laboy, an RN, that she could not sit down close to her while she was writing nursing notes. Appellant stated that that evening she was called at home and told that she was going to receive a written reprimand for not giving antibiotics to the patients in her ward even though it was Ms. Laboy's turn to give antibiotics that day. She stated that no one apologized or retracted the incorrect statement. On July 7, 1993 appellant stated she asked her head nurse, Leticia Carmona, to allow her to attend an Intensive Care course. Appellant stated that a licensed practical nurse was chosen to take the course.

After appellant paid for the course at her own expense, she was then selected to work the evening of the course and she was unable to attend the course.

Appellant stated that on March 1, 1994, her first day back, after an extensive maternity leave, she was “open object of verbal abuse by her head nurse, Leticia Carmona. Appellant alleged that she was told she was working too slow and that she was told by Ms. Carmona that she was going to find a new nurse who was a better worker than appellant. In May 1994, appellant stated she called in to advise that she would have to stay home to care for her newborn and her ill boyfriend, she was threatened with absent without official leave and then called a number of times to verify her whereabouts.

Appellant’s supervisor submitted a statement to the Office of Workers’ Compensation Programs wherein she indicated that appellant began her employment on February 23, 1992, that as a new employee she was coached and helped to adapt to the new working environment. Further, appellant’s supervisor noted that appellant’s relationships with her coworkers were satisfactory. Appellant’s supervisor stated that she had never raised her voice or verbally abused anyone. She also stated that appellant’s daily duties were no different than those of the other RNs.

Appellant’s supervisor stated that appellant’s performance was marginal and an improvement plan was established and supervision was provided until she was able to reach a satisfactory level. The supervisor indicated that Ms. Laboy was on annual leave on March 27, 1994, the day appellant claims she spoke to her disrespectfully. Appellant’s supervisor also stated that appellant was off duty on May 29 and May 30, 1994 dates appellant provided for other occurrences. The record indicates that on April 7, 1992 appellant’s temporary appointment was terminated. The termination of employment letter was withdrawn on April 23, 1992 and appellant was given written counseling and placed on a 13-month temporary appointment. The record indicates that appellant’s appointment was again extended thereafter.

The denied appellant’s claim by decision dated December 13, 1994. The Office denied modification of the prior decision, after merit review, on January 29, 1996.¹

Workers’ compensation law is not applicable to each and every injury or illness that is somehow related to an employee’s employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability resulted from the employee’s emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a disabling condition resulting from an employee’s feelings of job insecurity *per se* is not

¹ The Board notes that after appellant filed her appeal with the Board on February 15, 1996, the Office issued a decision dated April 10, 1996 denying merit review. Under the principles set forth in *Douglas E. Billings*, 41 ECAB 880 (1990), the Office decision dated April 10, 1996, issued while the Board had jurisdiction over the case, is null and void.

sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employee's Compensation Act. Nor is disability covered when it results from such factors as an employee's position.²

An emotional condition arising from appellant's performance of day-to-day or specially assigned duties is compensable pursuant to the Act.³ Thus, if an employee develops an emotional condition while trying to meet the requirements of a position, such emotional condition is generally compensable.⁴ In the present case, appellant has acknowledged that she enjoyed her work and that her work duties were not the alleged cause of her condition.

Rather than the work itself, appellant has attributed her emotional condition to alleged administrative actions and harassment by her supervisor and coworkers. Appellant has not, however, established the compensability of these allegations. Although administrative and personnel matters are generally related to the employment, they are functions of the employer and not duties of the employee.⁵ Thus the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁶

Appellant's allegations regarding the termination and reinstatement of her employment, the denial of assignment as charge nurse, denial of course attendance, verification of medications dispensed on a particular day and questions regarding leave status, are administrative actions. Unless these actions are shown to be in error or abuse, they are not compensable factors under the Act. Appellant has not established any error or abuse. The only documentation of record regarding these allegations is that the termination of appellant's employment was withdrawn and appellant was provided written counseling. The Board has held in prior cases the mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.⁷ Appellant has not substantiated, with the necessary supporting evidence, any specific act of error or abuse on behalf of the employing establishment in either the termination action or regarding any of the other implicated administrative actions. Appellant has therefore not established that the employing establishment acted in error or abusively in an administrative or personnel action.

Appellant's allegations that her supervisor threatened to replace her with a better worker and that appellant worked too slow are compensable factors. However, appellant has not established through corroborating witnesses or other evidence that these threats occurred.

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Clara T. Norga*, 46 ECAB 473 (1995).

⁴ *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

⁵ *Gregory N. Waite*, 46 ECAB 662 (1995).

⁶ *Id.*

⁷ *Mary L. Brooks*, 46 ECAB 266 (1994).

Appellant has also alleged that she was harassed by her supervisor and other coworkers. Actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act.⁸ However, for harassment to give rise to a compensable factor of employment, there must be evidence that harassment or discrimination did, in fact, occur.⁹ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.¹⁰ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegation with probative and reliable evidence.¹¹

In the present case, while appellant has alleged that she was spoken to inappropriately by Carlos Reyes, Carmen Laboy, and Leticia Carmona, appellant has not submitted any supporting evidence that these interactions did in fact occur in the manner alleged by appellant. As appellant did not establish the factual basis for her claim of harassment, the Office properly determined that appellant had not alleged a compensable factor of employment.

As appellant did not establish a compensable factor of employment pursuant to the Act, the Office was not required to evaluate the medical evidence of record to ascertain whether medically appellant had a disabling emotional condition.

The decision of the Office of Workers' Compensation Programs dated January 29, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 22, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁸ *Supra* note 4.

⁹ *O. Paul Gregg*, 46 ECAB 624 (1994).

¹⁰ *See Lorraine E. Schroeder*, 44 ECAB 323 (1992).

¹¹ *See supra* note 9.